In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1168

GERALD E. SIGNORELLI, PETITIONER

v.

ANDREW T. MALLECK, LIEUTENANT COMMANDER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Connecticut seeking his discharge from the Army on the ground that he was not medically qualified for military service and that the selective service board had violated its rules by not granting him a "medical interview" upon his request (T. 32, 40 83).[1]

[1] "T." refers to the one-volume transcript of hearings held in the district court on September 15 and 24, 1969, separately paginated. All page references used refer to the September 24 hearing transcript. "S.S. File" refers to numbered pages in petitioner's selective service file, admitted into evidence (T. 10). The individual exhibits also admitted into evidence are contained in this file. All of these are on file with the Clerk of this Court.

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In a thorough memorandum opinion fully detailing the relevant facts, the district court (Judge Blumenfeld) denied relief (Pet. App. 1–8), and the court of appeals affirmed *per curiam* (Pet. App. 10–11).

The opinion of the district court, on which we rely, recites in full detail petitioner's Selective Service history of student deferments and medical examinations both before and after he was ordered to report for induction in August 1969. While petitioner states that the basis of his claim was that since 1964 he had suffered from a severe allergy condition "approaching asthmatic proportions" which required treatment by an allergist (Pet. 3), petitioner's own allergist at the hearing before the district court described petitioner's condition in 1969 as only "moderate" in degree (T. 115). His condition had been controlled for years by either antihistamines or desensitization innoculations (T. 40).[2]

Moreover, petitioner requested the "medical interview" after he had already been examined, found acceptable for induction, and had been ordered to report. Petitioner's request to his local board was thus untimely. Medical interviews by the medical advisor to the local board are "for the purpose of screening and disqualifying at the local board those registrants who have [disqualifying] conditions * * *" (32 C.F.R. 1628.1; Pet. App. B 13a). They are designed to be a screening step, to eliminate sending obviously inca-

[2] A third examination of petitioner, at the request of the assistant United States attorney, accomplished on September 23, 1969, revealed "no evidence of any nose or throat disease" (Govt. Ex. 6, T. 175).

pacitated registrants for a physical examination at an Armed Forces Examining and Entrance Station (AFEES). They are not procedures to be employed after an order to report for induction (see S.S. File 25).

Petitioner's reliance (Pet. 5) on the case of *Benitez-Manrique* v. *Micheli*, 305 F. Supp. 334 (D., P.R.), cannot be supported. When the defendant in that case registered, he stated and substantiated the fact that he suffered from a heart condition which had required surgery. He later submitted a second claim that he suffered from a disqualifying medical condition. Nevertheless, Benitez-Manrique was ordered to report for induction. Based on such facts, the court in that case found "that the registrant raised his claim timely" (305 F. Supp. at 337) and that his local board had violated its own rules by not sending him the forms to request a medical interview "before he had been sent any induction order" (305 F. Supp. at 338). Petitioner's case is the direct opposite as he made no claim of a physical defect when he initially registered (T. 43) and never did seek deferment on physical grounds, prior to receipt of his order to report for induction.

While petitioner argues that the district court "concluded that the Local Board failed to comply with the regulations" concerning a medical interview examination (Pet. 6), the district court merely held that if there was any deviation from the regulation it was harmless (Pet. App. A, 5a, n. 8). The regulation on which petitioner relies (1628.2(b)) applies

to registrants who have not yet been physically examined and found acceptable. The district court, in fact, concluded that petitioner's "late claim was given all the consideration it would have received if timely presented" (Pet. App. A, 7a).[3]

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1970.

[3] Thus, as a result of inquiries apparently initiated by a United States Senator, petitioner, after being accepted at the local Armed Forces Examining and Entrance Station, was sent to a civilian specialist, Dr. Esdaile, a civilian doctor under contract with AFEES to perform medical examinations.

After a full examination, Dr. Esdaile concluded that petitioner was "[f]it for military service." His report was reviewed by a physician in the Surgeon General's Office and a physician in the Department of the Army, who concurred that he qualified for service (Pet. App. A 4–6).

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